

May 2, 2007 BZA



REQUEST ANALYSIS  
AND  
RECOMMENDATION

07AN0297

Durwood M. and Joan M. Smart

Dale Magisterial District  
5626 Elgar Road

REQUEST: A Special Exception to permit the keeping of six (6) dogs in a Residential (R-7) District.

RECOMMENDATION

Recommend denial of this Special Exception for the following reasons:

- A. The proposed use may be likely to have an adverse effect on the health, safety or welfare of persons residing in this neighborhood or on adjacent property.
- B. The keeping of six (6) dogs is incompatible with the permitted uses in this Residential (R-7) District.
- C. There are no conditions that will be adequate to address the negative impacts that keeping six (6) dogs on the property will have on this residential area.

GENERAL INFORMATION

Location:

Property is known as 5626 Elgar Road. Tax ID 771-692-8605 (Sheet 11).

Existing Zoning:

R-7

Size:

0.234 acre

Existing Land Use:

Residential

Adjacent Zoning and Land Use:

North - R-7; Residential  
South - R-7; Residential  
East - R-7; Residential  
West - R-7; Residential

Utilities:

Public water and sewer

General Plan:

(Central Area Land Use and Transportation Plan)

Residential Use  
(7.01 or more)

DISCUSSION

The applicants request a Special Exception to permit the keeping of six (6) dogs in a Residential (R-7) District. This type of use is classified by the Zoning Ordinance as a private kennel. The Ordinance defines a private kennel as “A place where three or more dogs, more than four months old, are kept for private use.”

The applicants provide the following information in support of this request:

We have reduced the number of dogs we originally had. The remaining are two (2) outside dogs and four (4) tiny dogs inside. There is plenty of room inside and outside for them. We have three (3) tiny teacup Yorkies and an eleven (11) year old Chihuahua, outside we have a Siberian Husky and a crippled Pug. Our neighbors on either side do not have any problems with our dogs. The outside dogs are in a pen with a house that has heat and air condition. The inside dogs use a doggie door to get to the back yard which is fenced. All of our pets are well cared for by our vet and all have had their shots and vaccines. We have lived in our home for thirty-one (31) years and no one complained before.

Staff visited the site in response to a complaint. Staff’s inspection revealed that the applicants were in violation of the Zoning Ordinance by keeping more than two (2) adult dogs (private kennel) in a Residential (R-7) District. This request is in response to staff’s investigation.

Staff’s field inspection revealed a single family dwelling located in the Belmont Parkway Subdivision. This is an older, well established neighborhood which was recorded in 1972. There

are single family dwellings located to the north, east, south and west of the subject property. A six (6) foot vinyl privacy fence is located around the perimeter of half the rear yard with a four (4) foot tall chain-link fence enclosing the remaining rear yard.

The subject property consists of 0.234 acre and is zoned Residential (R-7). The keeping of this unusually high number of dogs is similar in character to a commercial kennel. The Zoning Ordinance's definition of a "Commercial Kennel" is a facility where dogs are kept for boarding, breeding, care, grooming, sale or other purpose for commercial gain. The Zoning Ordinance would require a Conditional Use if the applicants were considering breeding or selling dogs. This proposed use (private kennel) is not compatible with uses that are permitted in a Residential (R-7) District which is intended for single-family dwellings.

This type of request may have an adverse effect on the character of the area and may adversely affect the welfare of the persons residing or working in the area because the noise produced by six (6) dogs may create a nuisance.

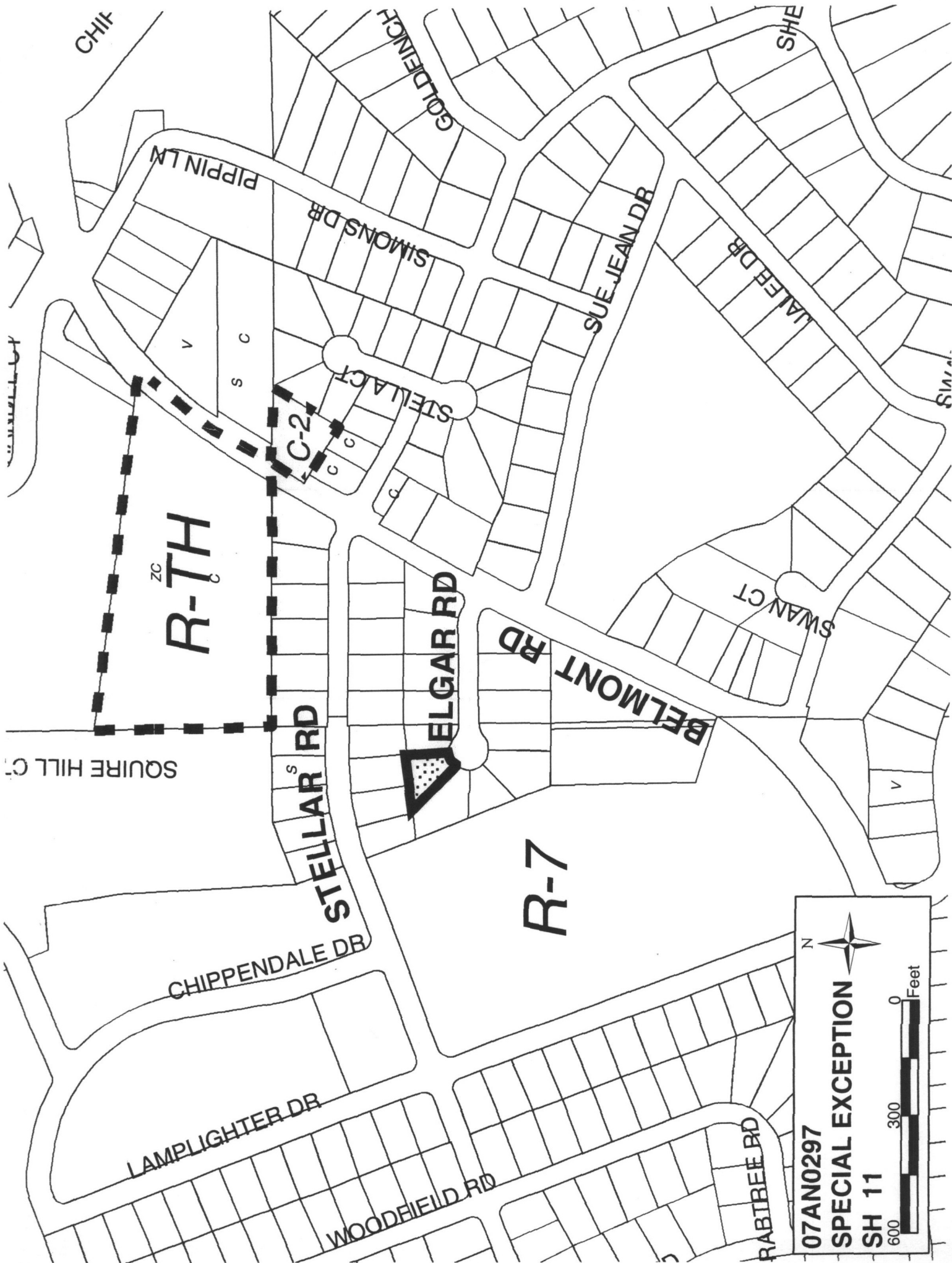
The imposing of conditions will not mitigate the negative impact that this use may have on this well established residential area. Although the yard is adequately maintained and the dogs are confined in the house and within a fence in the rear yard, the number of dogs may be a nuisance or a safety issue to adjacent and area properties. Therefore, staff cannot support this request.

However, if the Board feels that this request has merit, staff recommends that it be subject to the following conditions:

#### CONDITIONS

1. Special Exception shall be granted to and for Durwood M. and Joan M. Smart, exclusively, and shall not be transferable nor run with the land. (P)
2. Special Exception shall be granted for a period not to exceed three (3) years from date of approval and may be renewed upon satisfactory reapplication and demonstration that the keeping of these six (6) dogs has not proved a detriment to the adjacent property or the area in general. (P)
3. The four (4) inside dogs (Yorkies and Chihuahua) shall be kept in the existing dwelling. Whenever these animals are allowed outside the dwelling, they shall be on a leash or within the fence in the rear yard. The two (2) outside dogs (Siberian Husky and the Pug) shall be kept in the existing pen in the rear yard. (P)
4. Should any of the dogs be given, sold or pass away, it shall not be replaced. (P)

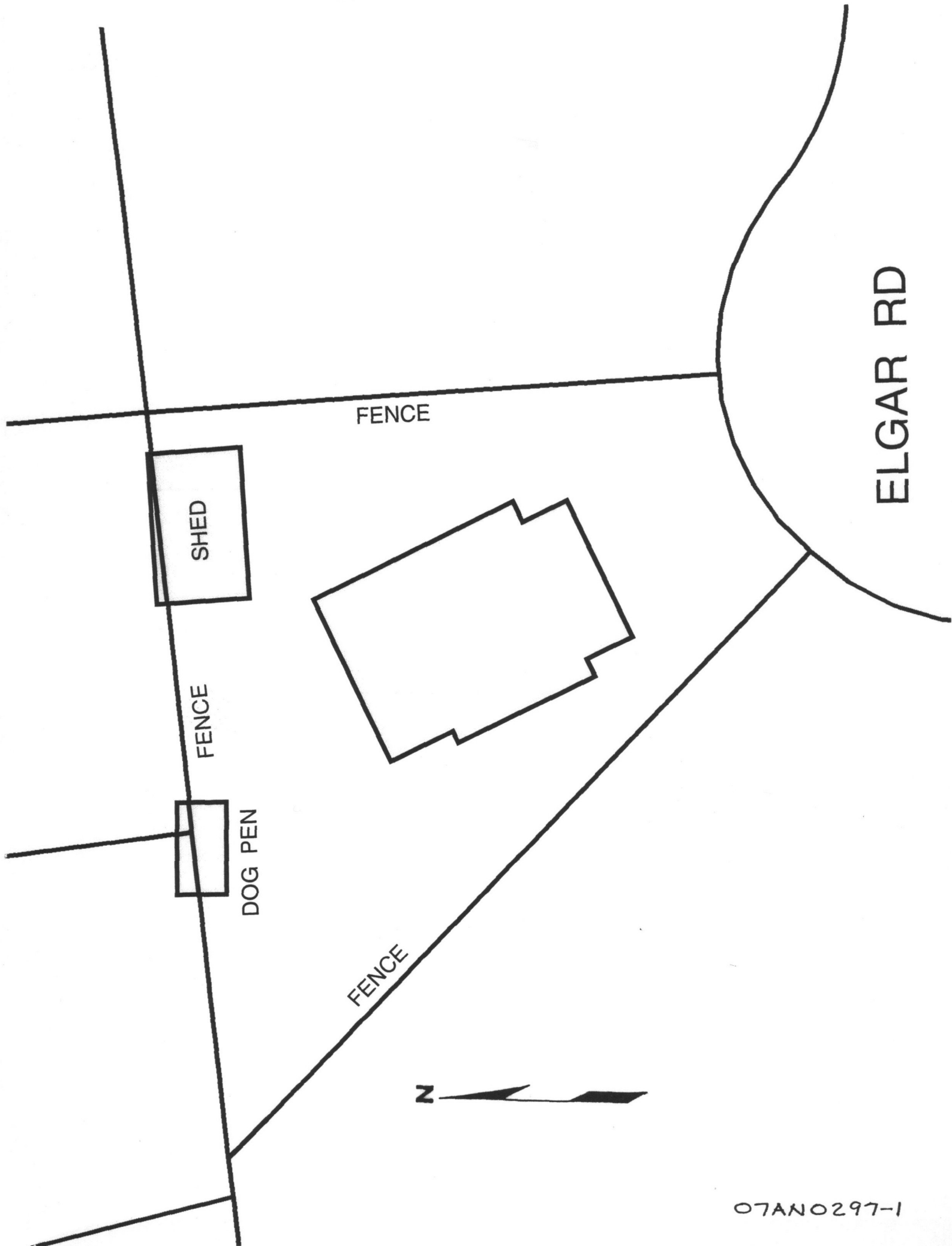
5. The applicants shall provide a history of each dog, such as age, sex, color and size as well as a photo to the Planning Department within thirty (30) days of approval of the Special Exception. (P)



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SPECIAL EXCEPTION  
SH 11  
600 300 0 Feet

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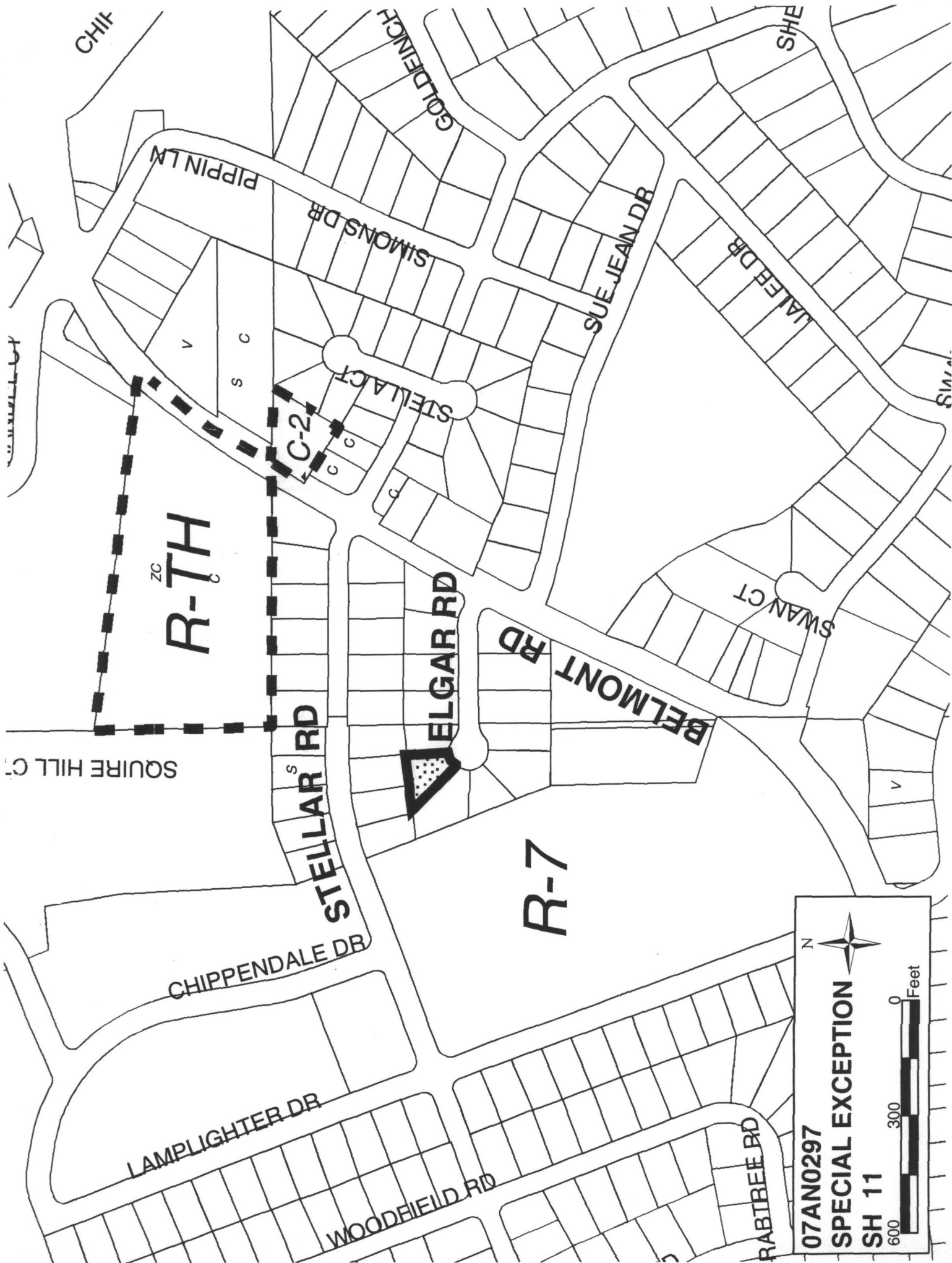
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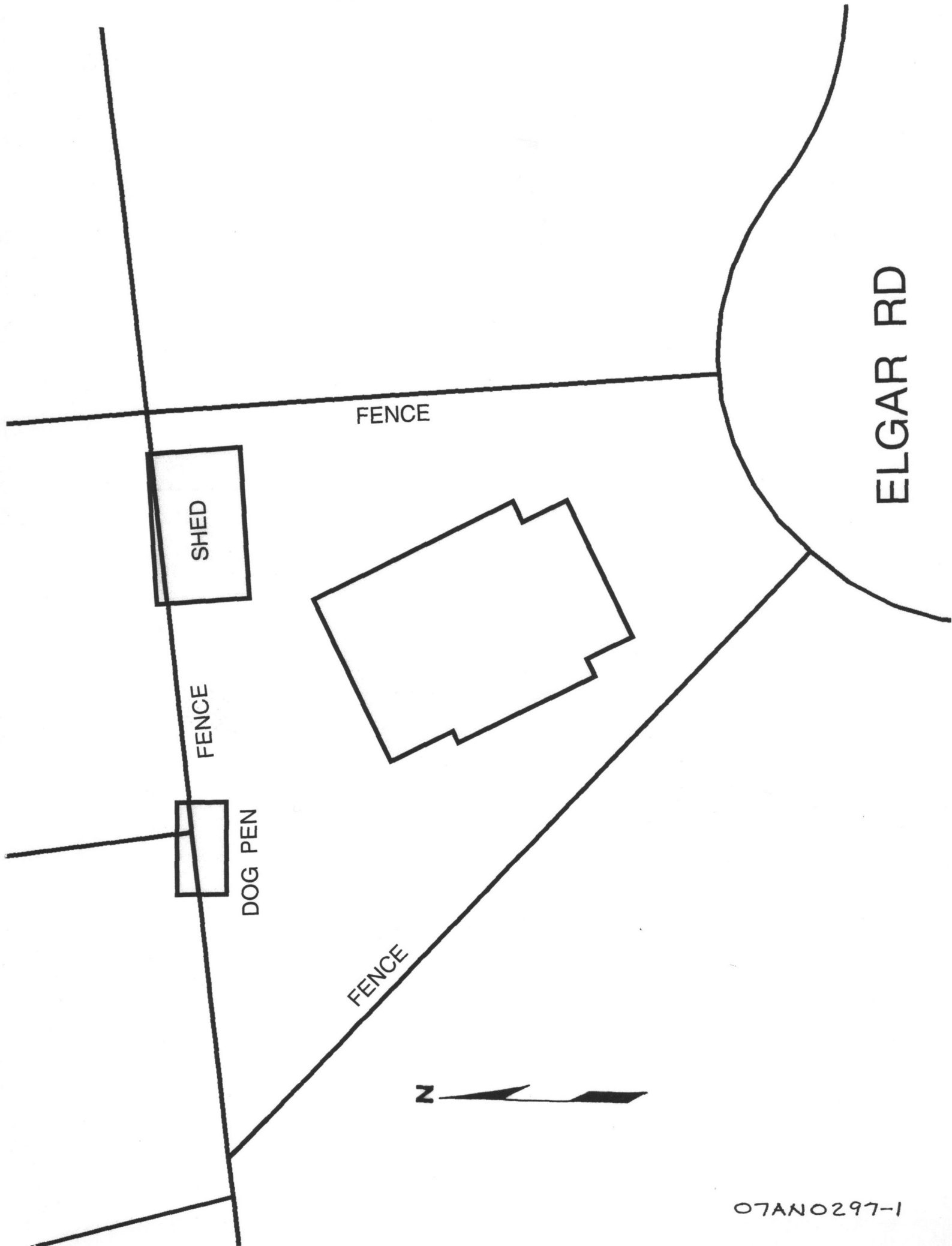
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